
(2003) 04 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : LPA No's. 18 and 32 of 2003

Competent Authority, Entrance Examination	APPELLANT
Vs	
Rajesh Pandita Wasim Rasool Vs Competent Authority, Entrance Exam.	RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Citation : (2003) 2 JKJ 757

Hon'ble Judges : V.K. Jhanji, Acting C.J.;Sudesh Kumar Gupta, J

Bench : Division Bench

Advocate : Sunil Sethi, U.K. Jalali, for Wasim Rasool and K.S. Johal, A.A.G for Competent Authority, for the Appellant; P.N. Bhat, for Rajesh Pandita, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, A.C.J.

1. This shall dispose of LPA(OW) No. 18/2003 directed against the judgment dated 11.10.2002 of the learned Single Judge passed in OWP No.

692/2002 whereby writ petition filed by Rajesh Pandita has been allowed and the Competent Authority has been directed to admit him against the

payment seat which became available during the counselling. LPA No. 32/2003 has been filed by Wasim Rasool, who was the last candidate

selected for MBBS payment seat. Because of the order passed by the learned Single Judge in OWP No. 692/2002 Wasim Rasool will have to

vacate the seat occupied by him. It may be stated that Wasim Rasool was not made a party to the writ petition (OWP No. 692/2002) filed by

Rajesh Pandita. Wasim Rasool, too had filed a writ petition in the Srinagar Wing of the High Court and by an interim order Acharya Shri Chandra

College, Sidhra, Jammu was directed to issue roll number to Wasim Rasool so as to enable him to attend the classes. Since Wasim Rasool is going

to be affected by the judgment of the learned Single Judge passed in OWP No. 692/2002 he has been permitted to file LPA against the said

judgment.

2. Briefly stated the facts of the case are that Competent Authority Entrance Examination, J&K conducted Common Entrance Test for filling the

seats to the MBBS/BDS/B.Sc(Agri) and other disciplines for the Session 2002. There are four Medical Colleges for admission to MBBS Course

and one Dental College for admission to BDS Course. Out of four medical colleges two are private colleges. For the students having permanent

resident certificate the allotment of seats is as under:

FOR MBBS COURSE Free Seats Payment seats

Gflvt.Medical College, Sgr, 100 Nil

Govt. Medical College, Jammu 100 Nil

Acharya Shri Chandra College, Jammu 25 25

SKIMS Medical College, Sgr 50 Nil

FOR BDS COURSE Free Seats Payment seats

Govt. Dental College, Sgr 20 Nil

FOR B.V.Sc & A.H.Bsc

SKAUST, Kashmir

B.V.Sc & A. H 40 Nil

B.Sc (Agri) 40 Nil

B.Sc Forestry 10 Nil

SKAUST, Jammu

B.V.Sc & A.H 38 Nil

N.Sc (Agri) 28 Nil.

3. For BAMS/BUMS courses there are 45 free seats, 40 payment seats and Management seats in two private Ayurvedic Colleges.

4. In the Common Entrance Test Rajesh Pandita secured 177 marks and Wasim Rasool secured 176 marks in medical stream. Rajesh Pandita

had given 1st choice for MBBS Course, Second and third choices, for BDS and

BAMS Course respectively and Wasim Rasool gave 1st choice for MBBS, 2nd for BDS, 3rd for B.V.Sc and 4th choice for BAMS Course.

5. In the select list published in Daily Excelsior on 17.7.2002 name of Rajesh Pandita figured at S.No. 1 in the list of candidate allotted free seats in

BAMS, whereas name of Wasim Rasool was shown at S.No. 48 in the list of BDS Open Merit (Male candidates/ MBBS Payment Seats of

Acharya Shri Chandra College/B.V.Sc/B.Sc Agri/B.Sc Forestry (Open Merit). Vide Notification No. 28 CAKE of 2002 dated 26.7.2002

published in Daily Excelsior, Wasim Rasool, who was at S.No. 48 in the select list of BDS Open Merit (Male Candidates/MBBS Payment Seats

of Acharya Shri Chandra College/B.V.Sc/B.Sc Agri/B.Sc Forestry (Open Merit), was allotted MBBS seat under ""Payment Category"". Rajesh

Pandita having felt aggrieved of the action of the Competent Authority denying admission to him in MBBS filed writ petition OWP No. 691/02.

Learned Single Judge on finding that Rajesh Pandita had secured 177 marks, whereas the last candidate admitted against the payment seat in

MBBS had secured 176 marks held Rajesh Pandita entitled to be selected against the payment seat.

6. Against the order of the learned Single Judge, two Letters Patent Appeals have been filed, one by the Competent Authority and the Second by

Wasim Rasool, who had earlier filed writ petition in the Srinagar wing of this Court.

7. Submission of the learned counsel for the Competent Authority and the learned counsel for the appellant Wasim Rasool is that the select list was

published in Daily Excelsior on 17.7.2002. Rajesh Pandita who had secured 177 marks was allotted free seat in the Open Merit category in the

discipline of BAMS. In the list of BDS Open Merit (Male Candidates/MBBS Payment Seats of Acharya Shri Chandra Colege/B.V.Sc/B.Sc

Agri/Bsc Forestry (Open Merit), as many as 108 candidates were shown and Wasim Rasool figured at Sr. No. 48. Learned council submitted

that after the first round of selection (free seats) was over, the counselling for payment seats was conducted on 23rd, 24th & 25th of July, 2002

but Rajesh Pandita did not appear before the competent authority during the process of counselling nor made any representation that he being

higher in merit may be considered against the payment seat. Further according

to them during the counselling process the candidates with 180, 179, 178, marks as per their choice were allotted payment seats in B.V.Sc, BDS and also in MBBS and by a fortuitious circumstances Wasim

Rasool with 176 marks as per his choice was allotted MBBS (Payment Seat) in Acharya Shri Chandra College, Jammu.

Learned counsel for Wasim Rasool contended that his client reported to the office of the Principal, Acharya Shri Chandra College, Sidhra, Jammu

in pursuance of letter No. CAEE/2002 dated 29.7.2002 issued by the Competent Authority whereby he was informed that he has been selected

for admission to MBBS course against the payment seat. Learned counsel also submitted that on receipt of the selection letter Wasim Rasool

applied and obtained Education Loan from the Jammu and Kashmir Bank Ltd. and deposited the fee. He though was allowed to attend the classes

but was not issued the Identity Card and the Roll Number. He thus was constrained to file writ petition OWP No. 446/2002 in the Srinagar Wing

of the High Court and on the basis of interim order dated 23.9.2002 Roll Number was issued and he was allowed to attend the classes. It is

submitted that it would be great injustice to him, if his admission is cancelled.

8. On the other hand, the learned counsel appearing on behalf of Rajesh Pandita submitted that the candidate who had secured less marks than the

petitioner has been admitted to MBBS against the payment seat, whereas he has been denied admission though he had secured 177 marks in the

Common Entrance Test. He also submitted that the Competent Authority committed an error in placing him in the category of ""Free Seats in

BAMS"" at S.No. 1. Further according to him Rajesh Pandita repeatedly approached the Competent Authority for placing him in the payment seat

category to MBBS course as per the marks obtained by him and he had been assured that his name would find place to MBBS course against the

payment seat, but despite the assurance extended to him he has been denied the admission. Learned counsel contended that the learned Single

Judge committed no error in law in directing the Competent Authority to give admission to Rajesh Pandita for undergoing MBBS Course against

the payment seat.

9. We have heard the learned counsel for the parties and have gone through the record on the file.

10. It is not in dispute that in the select list published on 17.7.2002 Rajesh Pandita who had secured 177 marks was given free seat in the Open

Merit Category in the discipline of BAMS, whereas Wasim Rasool was shown at S.No. 48 in the list of BDS Open Merit (Male

Candidates/MBBS Payment Seats of Acharya Shri Chandra College/B.V.Sc/B.Sc Agri/B.Sc Forestry). It is also not in dispute that the counselling

for the payment seat was held on 23rd, 24th, & 25th of July, 2002. In pursuance of the counselling the Competent Authority issued letter of

authority to Wasim Rasool in the name of Principal, Acharya Shri Chandra College, Sidhra, Jammu that he has been selected to MBBS course

under payment category and he be given admission after checking the certificates/documents in original. On the basis of the selection letter Wasim

Rasool applied for Education Loan from the Jammu and Kashmir Bank Ltd. and after obtaining the loan deposited his fee and is pursuing the

MBBS course since then. It is true that he was not given the roll number and Identity card because in the mean time Rajesh Pandita filed writ

petition in the Jammu Wing of the High Court and by an interim order dated 1.8.2002, the Competent Authority was directed to reserve one seat

for Rajesh Pandita. In the writ petition filed by Rajesh Pandita only the Competent Authority was made party. Neither the Acharya Shri Chandra

College nor Wasim Rasool was made a party. It appears that on receipt of the interim order dated 1.8.2002 from the High Court, the Competent

Authority informed the Acharya Shri Chandra College of order dated 1.8.2002 and in compliance of the said order, the seat against which Wasim

Rasool was admitted was reserved till the final disposal of the writ petition. According to the learned counsel appearing for Wasim Rasool, the

College Authorities had not informed his client about the filing of the writ petition by Rajesh Pandita or any interim order passed therein, but since

the roll number was not issued to him he approached the Srinagar Wing of the High Court and by an interim order dated 23.9.2002 Acharya Shri

Chandra College was directed to issue Roll Number to him. The record of the case shows that when the counselling for the payment seat was

going on Rajesh Pandita did not approach the Competent Authority that he be considered for payment seat. It is only after the process of

counselling was over and final select list was published on 27.7.2002 that Rajesh Pandita approached the Competent Authority with the grievance

that he should have been called for counselling against the payment seat for MBBS Course. Rajesh Pandita in the writ petition filed by him has

alleged that he Approached the Competent authority before the final select list came to be issued but there is no acceptable proof on the record

that he had approached the Competent Authority in this regard. In fact his representation dated 29.7.2002 addressed to the Secretary, Competent

Authority Entrance Examination does not indicate that he had made any representation prior to 29.7.2002. It appears to us that since Rajesh

Pandita had opted for BAMS course and his name figured at S.No. 1 against free seat, he did not take the risk of leaving the free seat and for that

matter may not have approached the Competent Authority. It is only when the final select list was published and Wasim Rasool, who had secured

176 marks was admitted to MBBS course against payment seat, Rajesh Pandita approached the Competent Authority with a grievance that he

having secured 177 marks should have been considered against the payment seat.

11. It would have been a different matter if Rajesh Pandita had approached the Competent Authority during the process of counselling and his

case had not been considered. We cannot lose sight of the fact that Wasim Rasool after obtaining loan from a Bank has been attending the classes

for the last one year.

12. Besides, there is no question of Rajesh Pandita ""making up"" the requisite number of periods necessary to complete the course. The course is

for five years which commenced in August 2002. Rajesh Pandita would be wholly ill equipped to take the examination for the first year nor he

would be able to attend number of classes required for taking 2003 Examination. There is no provision by which a student, who has for whatever

reason failed to attend the classes from the commencement of the Session can take supplementary classes in order to enable him to appear for final

examination. To disallow Wasim Rasool from completing his MBBS course and to grant admission to Rajesh Pandita at this stage would amount

to a colossal waste of effort and expenditure. More-over for the mistake, if any, committed by the Competent Authority, Wasim Rasool cannot be

made to suffer.

13. In these circumstances, we are of the view that at this stage, it would not be

proper to direct the Competent Authority and the Acharya Shri Chandra College to admit Rajesh Pandita to the MBBS course and disturb Wasim Rasool, who has already been admitted and is undergoing the course.

14. We accordingly allow the appeals filed by the Competent Authority and Wasim Rasool and set aside the judgment of the learned Single Judge.

In consequence thereof the writ petition filed by Rajesh Pandita shall stand dismissed. He may look for admission in future. There shall be no order as to costs.